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7 PERRIS J. LEE,  
8 Plaintiff,  
9 v.  
10 E. KNOX, et al.,  
11 Defendants.

Case No. [18-cv-03689-HSG](#)

**ORDER DENYING REQUEST TO  
VACATE JUDGMENT**

Re: Dkt. No. 67

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13 Plaintiff filed this *pro se* civil rights action under 42 U.S.C. § 1983. Dkt. No. 1. On March  
14 30, 2022, the Court dismissed this action without prejudice for failure to prosecute and failure to  
15 respond to the Court’s order, pursuant to Fed. R. Civ. P. 41(b); and entered judgment in favor of  
16 Defendants. Dkt. Nos. 65, 66. Now pending before the Court is Plaintiff’s motion to vacate the  
17 dismissal and entry of judgment. Dkt. No. 67. For the reasons set forth below, the Court DENIES  
18 without prejudice the request to vacate the dismissal and entry of judgment. Dkt. No. 67.

19 **DISCUSSION**

20 **I. Procedural History**

21 Plaintiff filed this *pro se* civil rights action under 42 U.S.C. § 1983 alleging that, on April  
22 12, 2015, Salinas Valley State Prison (“SVSP”) officers Knox, Curry III, Medina, Streeter, Gasca,  
23 and McGuckin physically attacked him, in violation of the Eighth Amendment’s prohibition  
24 against the use of excessive force. Dkt. Nos. 1, 7, 10.

25 On January 3, 2022, Defendants notified the Court that, since March 19, 2021, Plaintiff  
26 had failed to respond to Defendants’ discovery requests and has not sought an extension of time to  
27 respond. Dkt. No. 61. On January 5, 2022, Defendants filed a motion for summary judgment,  
28 arguing that the Court should deem admitted Defendants’ discovery requests because Plaintiff had

1 failed to respond to these requests and that the admissions would entitle Defendants to summary  
2 judgment. Dkt. No. 62. That same day, Defendants also filed a motion to compel Plaintiff to  
3 respond the discovery requests. Dkt. No. 63. On March 5, 2022, the Court ordered Plaintiff to  
4 show cause, by March 25, 2022, why the Court should not either (1) grant Defendants' summary  
5 judgment motion, or (2) dismiss this action for failure to prosecute pursuant to Fed. R. Civ. P.  
6 41(b). Dkt. No. 64. Plaintiff did not respond to the Court's Order to Show Cause by the specified  
7 deadline. On March 30, 2022, the Court dismissed this action without prejudice for failure to  
8 prosecute and failure to respond to the Court's order, pursuant to Fed. R. Civ. P. 41(b); and  
9 entered judgment in favor of Defendants. Dkt. Nos. 65, 66.

10 **II. Motion to Vacate**

11 Plaintiff has filed a motion to vacate the dismissal and judgment. Dkt. No. 67. The  
12 entirety of Plaintiff's argument is as follows:

13 I Perris J. Lee, (Plaintiff) move forward to appeal judgment of "Dismissal" in favor of  
14 defendants, for "Erroneous" that doesn't apply under the United States of law. Therefore  
judgment should be reversed in favor of Plaintiff allow Courts to correct error. (see Ex.  
15 "A-D") mailbox rule – Adams v. Lindsell (1818), Palo Alto v. BBPTC Co. 11 Cal. 3d 494  
16 (1974) as "All" documents timely filed.

17 Dkt. No. 67 at 1. Plaintiff attaches the following exhibits to his motion: a March 25, 2022 letter  
from the Clerk of the Court returning his discovery material; a copy of Cal. Civ. Code § 1583  
18 which defines consent in the context of contracts; an excerpt of a treatise explaining the mailbox  
rule as it applies to contracts; and a copy of *Palo Alto Town & Country Village*, 11 Cal. 3d 494  
19 (Cal. 1974). It is unclear what is the basis of Plaintiff's request to vacate the dismissal and  
20 judgment. The basis of the dismissal was Plaintiff's failure to prosecute the case by responding to  
21 Defendants' discovery requests and his failure to respond to the Court's March 5, 2022 Order to  
22 Show Cause. Plaintiff appears to be arguing that he timely filed a response with the Court that  
23 was incorrectly returned to him. However, Plaintiff has not provided a copy of what he sent to the  
24 Court so the Court cannot assess whether the documents sent to the Court answered the March 5,  
25 2022 Order to Show Cause and whether these documents would have successfully opposed  
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1 Defendants' summary judgment motion or otherwise showed an intent to prosecute.<sup>1</sup> Plaintiff's  
2 remaining exhibits are inapplicable in this context. This is not a contract case, and the Court is not  
3 governed by state law regarding contracts. Plaintiff's request to vacate the dismissal and judgment  
4 is DENIED. The denial is without prejudice filing a post-judgment motion pursuant to Fed. R.  
5 Civ. P. 60(b) seeking relief from a final judgment or order. Any motion for post-judgment relief  
6 must specify how Plaintiff has satisfied the requirements for post-judgment relief.

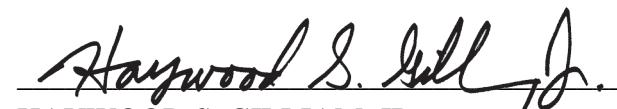
7 **CONCLUSION**

8 For the reasons set forth above, the Court DENIES without prejudice the request to vacate  
9 the dismissal and entry of judgment. Dkt. No. 67.

10 This order terminates Dkt. No. 67. This case remains closed.

11 **IT IS SO ORDERED.**

12 Dated: 4/12/2022

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14 HAYWOOD S. GILLIAM, JR.  
United States District Judge

United States District Court  
Northern District of California

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<sup>1</sup> If the documents that Plaintiff attempted to file with the Court were Plaintiff's discovery  
28 responses, they should be served on opposing party and not on the Court. Discovery is exchanged  
between the parties and not filed with the Court. Fed. R. Civ. P. 5(d)(1).